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THE ROLE OF REAL ESTATE – AS A SPECIFIC REGULATORY AREA – IN THE
VALUE ADDED TAX SYSTEM, WITH SPECIAL REGARD TO THE REGULATORY
AND LEGAL INTERPRETATION CHALLENGES AFFECTING THIS AREA

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Theses of the doctoral dissertation

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1. BASICS, A BRIEF SUMMARY OF THE RESEARCH TASK

I have been dealing with taxation for about ten years now. During this period, I had the opportunity to gain practical experience in many aspects of taxation, first as a trainee lawyer and then as a lawyer. Although I do not have any relevant statements, in my opinion, the vast majority of questions of legal interpretation and legal disputes arising in connection with taxation concern real estate in some form. This circumstance inevitably led to real estate as a specific legal and economic factor, as well as the taxation rules applicable to real estate, especially the VAT rules affecting real estate, becoming the focus of my interest.

1.1. THE SPECIFIC ROLE OF REAL ESTATE

The specific legal and economic role of real estate is due to several factors. On the one hand, it is important to highlight that properties typically have a long lifespan, they are not consumed or used within a short time after purchase. On the other hand, unlike other things that surround us in everyday life, the value of real estate typically increases over time. Thirdly, real estate may play a continuously changing role during its lifetime, with the result that it is linked to production and consumption from time to time, so that a building can be transformed into an office and then a hotel, while a plot of land can be built up or undeveloped – or these classifications may also vary in relation to the same plot – thus serving the realisation of different economic activities. In addition, almost all businesses are involved in a transaction related to real estate during their operation, whether it is the lease of the office space serving as the headquarters or the sale and purchase of real estate.

The social role of real estate is also indisputably outstanding, they play a central role in our lives. Access to housing and housing in good or poor location and quality shapes people's social life and their access to health care, education, job opportunities and leisure activities.¹

1.2. BASICS RELATED TO VAT

VAT is a multi-phase, general, value-added, indirect deduction tax. It is multiphased, since the value added tax covers all phases of production, it is general, since it applies to the sale and

¹ OECD (2022), Housing Taxation in OECD Countries, OECD Tax Policy Studies, No. 29, OECD Publishing, Paris. page 8.

service of all products, it is of the value added type, since the tax burden is not cumulative, only the value actually added is subject to the tax. The tax is indirect in nature, as the taxable person and the person liable to pay the tax are separated, and the deductible characteristic refers to the fact that the taxpayer can achieve the tax accumulation by deducting the tax charged to him. The tax is neutral in the sense that the tax liability does not take into account the "personal circumstances" of the company, and all sales are equally burdened, regardless of who performs the activity.²

According to Eurostat data, VAT is one of the main sources of revenue in all EU Member States.³ To illustrate this, the annual VAT revenue in Hungary is about 10% of the gross domestic product (GDP).⁴ VAT is also a key source of funding for the EU budget, as 0.3% of the VAT collected at national level is transferred to the European Union as an own resource, which represents 12% of the total EU budget.⁵

1.3. VAT REGULATION ON REAL ESTATE IN GENERAL

There is broad agreement that value added tax should not distort market conditions and consumer decisions, primarily due to the principle of fiscal neutrality, which is considered the cornerstone of value added taxation. This objective is best served by the fact that each state imposes value added tax on the widest possible range of goods and services consumed.⁶ Certain tax exemptions that are exceptions to the general rule are applied in a narrow range⁷ of cases, as they violate the logic and functionality of value added tax.⁸

From the basic assumption set out in the previous paragraph, one could rightly think that it must follow that transactions involving real estate are also subject to value added tax and the exemptions can only be applied in their case only in a limited number of cases (especially considering that the expenses incurred in relation to real estate transactions are perhaps one of

² Balázs BÉKÉS, Zsolt HALÁSZ: *Forgalmi adók és a vámjogi szabályozás alapjai*. Wolters Kluwer Kft., 2021. Chapter 1.5.

³ Tax revenue statistics, Eurostat. (available in https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tax_revenue_statistics)

⁴ According to the chapter containing direct revenues and expenditures of the 2023 budget, the planned VAT revenue for 2023 is HUF 7,099,683.7 million, which can be estimated at about 10.4% of the gross domestic product (GDP). Budapest, 14 June 2022

⁵ Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules fit for the digital age. COM(2022) 701 final, Chapter 1.

⁶ Sijbren CNOSSEN: *Improving the VAT treatment of exempt immovable property in the European Union*. Oxford University Centre For Business Taxation, WP 10/19. page 3-4.

⁷ See Case C-472/03, Arthur Andersen (ECLI:EU:C:2005:135).

⁸ Liam EBRILL, Michael KEEN, Victoria J. PERRY: *The Modern VAT*. International Monetary Fund, 2001, page 85-86.

the most decisive elements of consumer expenditure).⁹ At the same time, the characteristics of real estate – in view of their above-mentioned specific character – nuances this picture, especially since the taxation of real estate and the issue of taxes on real estate transactions is always a sensitive area, and reforms are influenced by a number of social and political circumstances.¹⁰

The specific role of real estate leads to the fact that the regulation governing real estate transactions is not only special, but also complex.¹¹ This conclusion is agreed by the renowned Stanford professor, Charles E. McLure, Jr.,¹² who believes that housing is one of the most difficult items to handle under a value-added tax.

If we look at the VAT or equivalent consumption tax rules of the OECD countries, we can see that with the exception of certain South American states (where the sale of real estate or the rental of real estate is fully taxed), there is¹³ no tax liability associated with all types of real estate, as tax exemptions have been introduced¹⁴ for certain real estate transactions to a narrower or wider extent (examples of the latter: Czech Republic, Portugal, Ghana, China). It should be noted that in the latter cases, an alternative form of taxation is typically applied.¹⁵

The value added tax systems of the individual OECD countries generally distinguish between two types of real estate: residential real estate and other real estate, the latter of which includes commercial real estate.¹⁶ As a general rule, properties other than residential properties are subject to VAT,¹⁷ while residential properties are generally subject to additional special or detailed rules (allowing tax exemption in certain areas).¹⁸ Compared to this general trend, the EU value added tax (or value added tax according to EU legal terminology) system differs

⁹ Satya PODDAR: Taxation of Housing Under a VAT. *Tax Law Review*, Vol 63, page 910-911.

¹⁰ Hansjörg BLÖCHLIGER, Reforming the Tax on Immovable Property: Taking Care of the Unloved, *OECD Economics Department Working Papers*, No. 1205, OECD Publishing, Paris, 2015, page 3.

¹¹ Ben TERRA, Julie KAJUS: *A Guide to the European VAT Directives 2007*. Volume 1, IBFD. page 1124-1127.

¹² Sijbren CNOSEN: VAT Treatment of Immovable Property, In: V. THURONYI, *Tax Law Design and Drafting* Ch. 7, IMF, 1996, page 231.

¹³ Robert CONRAD, Anca GROZAV: *Real Property and VAT*. Richard Krever (ed.): VAT in Africa. Pretoria University Law Press, 2008, page 81-82.

¹⁴ Robert CONRAD: Comments on VAT and Housing. *Tax Law Review*, Vol. 63, page 80-82.

¹⁵ Robert CONRAD, Anca GROZAV, op. cit., page 80-82.

¹⁶ Rita de la FERIA, Richard KREVER: Ending VAT exemptions: Towards a Post-Modern VAT. Wolters Kluwer, 2013. page 16-17.

¹⁷ Satya PODDAR, op. cit., page 905.

¹⁸ Rebecca MILLAR: VAT and Immovable Property: Full Taxation Models and the Treatment of Capital Gains on Owner-Occupied Residences. *Legal Studies Research Paper*, No. 13/50, Sydney Law School. page 254.

slightly¹⁹, in which, as a general rule, both residential real estate and other (commercial) real estate sales can be considered tax-exempt sales, based on historical factors.²⁰ In order to ensure that companies can still be granted the right to deduct tax in respect of these transactions, it is possible to choose the taxable treatment of the transaction in question according to the general rules and thus to exercise the right to deduct tax. However, there are many criticisms of this solution in the literature,²¹ as we can find solutions that differ from one Member State to another.²²

1.4. INDICATION OF THE TOPIC AND ITS ACTUALITY

Based on the above principles, it can be summarized that the VAT regulation applicable to real estate is extremely complex and multifaceted, and questions of legal interpretation related to this regulation often arise. Basically, these two factors (complexity and frequency) are what led me to choose the role of real estate in the value added tax system as the topic of my doctoral research and then of this doctoral thesis. In my view, these two factors ensure, on the one hand, the challenge, which must be the basic condition of a doctoral research topic, and, on the other hand, the usefulness for the legal researcher (or simply interested in the topic) audience, which is an important criterion of a doctoral research. In my opinion, doctoral research and doctoral dissertation must constitute an indispensable objective of the preparation of a work that primarily promotes the application of the law and, where appropriate, supports legislation.

As far as the topicality of the choice of topic is concerned, we can clearly state that the system of rules affecting value added tax, as well as the practice of the courts and the tax authority, have undergone dynamic development in recent decades, which changes have obviously not left or will not leave transactions involving real estate untouched. Accordingly, the range of issues arising in connection with the regulation is also expanding and changing from year to year. Transposing the jurisprudence of recent years (and clarifying the uncertainties in the

¹⁹ VAT denotes the EU-level type of tax, while the specific implementation of this in the Member States is described by VAT – i.e. in Hungarian EU terminology, a distinction has been made between the EU and the Member State concepts at the level of designations as well. MÁRTA FISCHER: *Eurolektusok, Az Európai Unió hatása a nyelvekre, különös tekintettel a jogi nyelvre*. Akadémiai Kiadó, 2023. Chapter 6.2.2.2.

²⁰ Sijbren CNOSEN: *VAT Treatment of Immovable Property*. In: V. THURONYI, *Tax Law Design and Drafting*, Ch. 7, IMF, 1996, page 6-7.

²¹ Dagmar HALABRINOVÁ, Karel BRYCHTA: *Taxonomy of EU Member States from the View of VAT Imposed on Immovable Property (year 2017)*. *European Financial Systems 2017 - Proceedings of the 14th International Scientific Conference (Part I)*, page 179-186.

²² Sijbren CNOSEN: *A Proposal to Improve the VAT Treatment of Housing in the European Union*. *Fiscal Studies*, Vol. 32, page 455-481.

application of the law so far), Implementing Regulation (EU) No 1042/2013 defined the concept of real estate from the point of view of value added tax, which remained without a legal definition in both EU law and domestic law for decades. In addition, the decree also clarified the regulation of services related to real estate, explicitly stipulating services (such as legal services related to the creation or transfer of rights existing or related to real estate) whose tax treatment has raised a number of questions of legal interpretation in recent years. The creation and entry into force of the decree is also emphasized because it did not require transposition into domestic law, i.e. the provisions of the decree are binding in the application of the rules affecting domestic value added tax. In recent years, the amendments have also affected certain rules set out in the VAT Act²³, highlighting the expansion of the scope of new real estate in this regard.

The choice of topic is also topical because the determination of the value added tax treatment of real estate, primarily by applying a preferential tax rate, has been a recurring tax policy tool in recent years to encourage the construction and sale of new real estate in Hungary. In recent years, a significant part of the valuations issued in relation to value added tax have been questions and interpretations related to the applicability of the 5% tax rate introduced in connection with the sale of new homes. At the time of writing, i.e. in March 2025, the question of how long and under what rules the applicability of the above-mentioned reduced 5% tax rate will be applied in the future is still a question.

2. OBJECTIVES AND HYPOTHESES OF THE DOCTORAL RESEARCH AND THE DOCTORAL DISSERTATION

In the course of my doctoral research, I tried to explore the legal provisions, literature, court and authority practice related to the treatment of real estate value added tax as fully as possible.

My research basically had two levels, the domestic and the international (typically EU) scene, taking into account that the VAT regulation affecting real estate is also located on two levels. In the course of my research, in addition to the literature, I also paid special attention to the exploration and interpretation of the positions, guidelines and articles issued by the tax authority and the Ministry of Finance in relation to the given topic, taking into account that in tax issues,

²³ Act CXXVII of 2007 on Value Added Tax.

knowledge and familiarity with these sources is essential for the assessment of a legal issue. It should be emphasized that in many cases we can see that the interpretation of the Hungarian authorities and courts differs in some respects from the practice of the EU, which is why I tried to explore the contradictions between the two levels during my research, and to shed light on their cause and nature.

The backbone of my doctoral research was the literature on taxation in the classical sense and the jurisprudence of the authorities and courts. In addition, I consider it necessary to emphasize – in line with the content of Szabolcs Anselm Szuromi's book *Canon Law Methodology*²⁴ – the importance of auxiliary sciences (i.e. the importance of sciences that provide additional, external data for work in a specific field of science).²⁵ In my opinion, it is necessary to pay attention to the analysis of auxiliary sciences in the course of taxation and research work in connection with it, since taxation and tax law are located on the border of law, economics and other fields of science (e.g. sociology, social policy). During my research in connection with my doctoral dissertation and the preparation of my doctoral thesis, I tried to take these aspects fully into account.

In line with the above, the basic objective of my doctoral thesis was to provide a comprehensive picture of the VAT regulation, practice, literature interpretations and related challenges related to real estate, and to formulate proposal(s) based on all this, which can help the future application of the law and legislation. My goal was also to ensure that the doctoral thesis serves not only scientific purposes, but also provides useful guidance for lawyers interested in the topic or dealing with tax issues related to real estate transactions in the course of their work.

Regarding my doctoral research and the doctoral thesis, I set up the following hypotheses:

- (i) The tax regulation on real estate is one of the tools of social policy, but its effectiveness is doubtful in the case of the preferential tax rate introduced for new homes.
- (ii) Due to the specific nature, role and significance of real estate, a special set of rules has been established for real estate transactions from a VAT point of view.
- (iii) The VAT rules applicable to real estate differ in many respects from one Member State to another, which leads to the fact that the VAT treatment of individual real estate transactions is not uniform in many respects in each Member State.

²⁴ Szabolcs Anselm SZUROMI O.Praem.: *Egyházjogi metodológia*. Szent István Társulat, Budapest 2011. page 66.

²⁵ ISTVÁN KÁLLAY: *Történelem segédtudományai*. Eötvös Loránd Tudományegyetem, 1986, page 53.

- (iv) The specific VAT regulation developed in respect of real estate is extremely diverse and complex, which makes it difficult for the application of the law to comply with the law on a case-by-case basis, and also results in a significant tax risk. The revision of the regulation is necessary in the interests of simplification and unification.

3. SUMMARY OF THE HYPOTHESES OF THE DOCTORAL THESIS

In the introduction to the doctoral thesis, I formulated four hypotheses regarding the role and location of real estate in the VAT system. The validity of these hypotheses is summarized below.

3.1. FIRST HYPOTHESIS

According to the first hypothesis, the tax regime on real estate is one of the instruments of social policy, however, in the case of the reduced tax rate introduced for new dwellings, the effectiveness of this instrument is doubtful. This issue is discussed in detail in Chapter 1 of Part II. We have seen that the concept of social policy plays a key role in the field of taxation. Its relevance from the point of view of immovable property is given by the fact that, in accordance with the VAT Directive, the Hungarian legislature²⁶ decided to introduce a reduced rate of 5% compared to the standard rate for new residential properties that meet certain conditions for reasons of social policy and in order to achieve such objectives. At the same time, following the introduction of the VAT reduction from 2016, no price decrease could be detected in the case of residential properties, and in fact, the general trend of recent years has been an increase in the price of residential properties. It is questionable and doubtful whether the reduced tax rate introduced for new homes can be regarded as a social policy step, especially if we can consider as a social policy step that aims to preserve and improve people's everyday lives, living conditions, quality of life and life chances, in summary, their well-being. In connection with the regulation, it is also doubtful whether it would stand up to the social policy test of the European Court of Justice. I consider my first hypothesis to be correspondingly justified.

3.2. SECOND HYPOTHESIS

²⁶ Council Directive 2006/112/EC on the common system of value added tax.

According to the second hypothesis, due to the specific nature, role and significance of real estate, a special system of rules from a VAT perspective has been established in relation to real estate transactions. We have seen that real estate undoubtedly plays a special role in economic life. They typically have a long lifespan, they are not consumed or used within a short time after purchase, their value typically increases over time, and properties can even play a continuously changing role during their lifetime, resulting in them being linked to production and consumption from time to time. As a result of these specific factors, we can see an extremely diverse regulation of real estate at the global level, but even at the EU level, which differs from case to case. Reviewing the regulations of the 77 states in Appendix 2 of the doctoral thesis, we can hardly find any state that contains the same tax treatment for transactions involving certain real estate. This is also true based on the overview of the EU spectrum according to Annex 1 of the doctoral thesis, we can find different regulations from one Member State to another, whether in terms of tax exemption, tax liability or even the tax rate applied. Although an overview of these rules shows that there are many similarities (the sale of residential properties is typically subject to tax exemption), the regulation is extremely diverse. Accordingly, I also see the second hypothesis as proven, repeating and confirming the quote of Stanford professor Charles E. McLure, Jr., already referred to in the introduction, according to which the treatment of transactions related to real estate from the point of view of value added tax is one of the most complex issues.

3.3. THIRD HYPOTHESIS

I also consider the contents of the third hypothesis, according to which the VAT rules applicable to immovable property differ in many respects from one Member State to another, and this does not lead to uniform regulation, as well as justification. We have seen that this current feature is primarily due to the fact that the VAT Directive leaves considerable leeway to the Member States to define certain concepts (e.g. building land, residential property) and certain rules (e.g. exercise of the right to deduct VAT) concerning immovable property. In my opinion, this concept of the current regulation is advantageous on the one hand, as it gives each Member State the opportunity to shape its regulation according to individual (domestic) needs. However, it seems to me doubtful to what extent it is consistent with the ideals of the uniform EU VAT system and with the principle of fiscal neutrality which is an integral part of it when such a significant area is regulated significantly differently in the various Member States. For my part, however, I am in favour of the possibility of a diversity of regulations, taking into account, first

of all, the fact that each Member State sets different economic policy and social policy objectives, the achievement of which may also require that the VAT rules concerning immovable property be formulated differently at Member State level (within a certain framework, of course).

3.4. FOURTH HYPOTHESIS

According to the fourth hypothesis, the specific VAT regulation developed for real estate is extremely diverse, which in many cases makes it difficult for the application of the law to comply with the law. We have seen that the EU legislator has taken a significant step towards the unification of EU regulations by defining a uniform definition of immovable property and the related place of supply applicable from 2017. By doing so, the legislator has made it possible to apply national regulations that do not follow the previous practice and differ from one Member State to another with regard to the definition of immovable property, and significant progress has been made in determining the scope of services related to immovable property. Nevertheless, we can still see that both the VAT Directive and the VAT Act distinguish between several different categories of real estate (unbuilt-up real estate, building plot, residential real estate) and associate different tax treatment with them, thus creating an extremely diverse system that necessarily makes law-abiding behaviour more difficult. The application of the law and law-abiding behaviour is also hampered by the fact that, as we have seen, the interpretation and practice of the European Court of Justice and the Hungarian tax authority do not coincide in many cases. Such topics included, among others, the accrual criteria of certain types of real estate, the management of the re-invoicing of utility costs, the demarcation of leasing and accommodation services, the issue of exercising the right to deduct tax, and the application of tax penalties in the event of incorrect tax treatment. I therefore also consider the fourth hypothesis to be validated.

4. DE LEGE FERENDA PROPOSALS

At the end of the doctoral thesis, I would like to formulate some suggestions below, which in my opinion can help future legislation and the application of the law.

4.1. SIMPLIFICATION OF TAXATION METHODS, UNIFICATION OF CONCEPTS

For my part, I would like to point out the simplification of the tax treatment of transactions involving real estate and the simplification of the definitions concerning real estate as one of the possible directions for the revision of the regulation.

We have seen that in the spirit of simplification and making the system more efficient, several models have been developed, which basically point in the direction of tax exemptions and in the direction of full taxation. For my part, I see this radical change of model in the field of real estate as immature, and there have always been and are important considerations behind the different tax treatments (tax exemption, direct taxation, reverse charge) for the current different types of real estate, as I have presented in this doctoral thesis. The individual models of full taxation have not yet been capable of overturning them, in my opinion.

In my doctoral dissertation, I referred to the general reverse charge mechanism (VAT), the possibility of which is provided by the VAT Directive. In my view, the widespread introduction of VAT could be a solution for transactions in the Member States where the correct (incorrect) application of direct or reverse charge poses a significant tax risk. This case also includes some of the transactions related to real estate, as we have seen. I consider that this approach, i.e. the shift of the tax regimes applicable in principle in the case of immovable property towards reverse charge, is worth considering. The amended regulation would basically prescribe the application of tax exemption or reverse charge as a method of taxation.

As far as simplification of concepts is concerned, I believe that it is most feasible at EU level. A possible direction for this may be the definite, non-derogatory definition of certain types of real estate (in particular: undeveloped real estate, built-up real estate, building land, residential real estate) in the VAT Directive (or implementing regulation). In this regard, the definition of immovable property serves as a good example, which has greatly contributed to the resolution of the uncertainties of interpretation that had arisen at the level of the Member States until then.

4.2. UNIFICATION OF THE APPLICATION OF THE LAW BY THE AUTHORITIES WITH EU JURISPRUDENCE, MAKING THE PRACTICE OF THE LAW ENFORCEMENT KNOWN

As I have pointed out, in addition to the complexity of the regulation, the application of the law is also made more difficult by the fact that the interpretation and practice of the European Court

of Justice and the Hungarian tax authority do not coincide in many cases. In my opinion, the application of the law by the Hungarian authorities should strive to bridge these differences by adjusting the directions of legal interpretation, as we have seen, for example, in the case of so-called fictitious invoice cases in the area of exercising the right to deduct tax.

In addition, I see it as a significant problem that the position of the Hungarian tax authority cannot be publicly known on a number of issues affecting real estate, thus also making it more difficult for taxpayers to apply the law and comply with the law. In my opinion, it would be necessary to publish more official information and positions on the subject.

4.3. FACILITATING THE SOCIAL POLICY GOAL

In the doctoral thesis, several criticisms were formulated in connection with the preferential tax rate related to the sale of new homes. In my opinion, in view of this, it is justified to revise the domestic regulation in order to be able to serve social policy goals more effectively. As a possible direction for the revision of the regulation, I propose to specify the identity of the buyer. In this respect, I mean that I would make the application of the reduced tax rate conditional on the fact that the buyer is a private individual, or even a certain maximum age could be determined, the requirement of a local dwelling or that the dwelling in question serves as the first dwelling ownership. In my view, these requirements would be much more appropriate for achieving social policy objectives.

In this regard, I propose to examine the VAT regime applicable to the sale of apartments in Italy, the rules of which I have presented in Chapter 1.3 of Part II. In addition to specifying the identity of the buyer and certain circumstances, it may be worth considering the application of the preferential VAT regulation in such a way that the sale is subject to the general tax rate, but the buyer private individual can receive part or all of the VAT incurred in the form of a tax refund from the state. This can ensure that the benefits caused by the reduced tax rate are not realised by the contractor, but by the buying private individuals, which is the real goal of the regulation. In addition, I think it is worth considering extending the preferential tax rate to other properties in addition to new homes. In addition to the current regulation, the sale of a number of non-new apartments, as well as the construction and installation work related to these properties, are subject to a tax rate of 27%, which necessarily puts these properties in a less favourable position. This happens despite the fact that, as described in Chapter 1 of Part II, the domestic housing

stock consists of a significant part of outdated, outdated properties, the modernization of which is also extremely important, even in the interest of social policy.

4.4. POSSIBLE LINKING OF VAT AND TRANSFER TAX RULES

As far as domestic regulation is concerned, I reviewed the examples of each Member State in relation to the tax treatment of transactions related to real estate, looking for possible directions for review. Based on the current Hungarian regulations, in the case of the transfer of ownership of real estate, in addition to VAT, as a general rule, a transfer tax payment obligation must also be reckoned with. Many transactions thus entail VAT and transfer tax payment obligations at the same time, which means a significant burden for the buyer (acquirer) party.

In this context, I would like to mention the Croatian regulation as a possible regulatory example,²⁷ in which the obligation to pay transfer tax arises in the case of the acquisition of real estate if the sale of the given (acquired) real estate is not subject to VAT payment according to Croatian rules. The sale of real estate is subject to VAT (i.e. no transfer tax payment obligation arises) if it is the sale of a building plot or the sale of a built-up real estate that has not yet been taken into use for the first time or has taken place, but no 2 years have passed since then. In the case of the acquisition of an old property, so to speak, a transfer tax payment obligation arises, while in the case of a building plot or a new property, it is not. This regulation would make it possible to avoid the duplication of VAT and transfer tax.

4.5. ADAPTATION OF THE DEFINITION OF TOTAL USEFUL FLOOR AREA IN THE VAT ACT TO THE NEW BUILDING REGULATIONS

In 2024-2025, a comprehensive review of the Hungarian building regulations was or is underway, as a result of which Méptv.²⁸ and TÉKA²⁹ replaced Étv.³⁰ and OTÉK³¹ forming the basis of the regulation for decades. As I referred to in my doctoral thesis, the key element of the

²⁷ See <https://gov.hr/en/real-estate-transfer-tax/1464>

²⁸ Act C of 2023 on Hungarian Architecture.

²⁹ Government Decree 280/2024 (IX.30.) on the Statutes of Urban Planning and Building Requirements.

³⁰ Act LXXVIII of 1997 on the Shaping and Protection of the Built Environment.

³¹ Government Decree No. 253/1997 (XII.20.) on the National Urban Planning and Building Requirements.

concept of a new apartment subject to the reduced tax rate is the total useful floor area, as the reduced tax rate can only be applied up to a certain total useful floor area (150 and 300 square meters). At the time of finalisation of this doctoral thesis (in March 2025), the VAT Act continues to refer to the OTÉK, which is no longer in force, when determining the total useful floor area (Section 259 Section 13/A of the VAT Act). In my opinion, it is justified to adapt the relevant provision of the VAT Act to the building regulations in force, with reference to the relevant provisions of the Mép Act and the Library.

5. LIST OF PUBLICATIONS ON THE TOPIC

I. Legal practice on the assessment of the legal consequences arising from the incorrect application of direct and reverse charge

Published: IUSTUM AEQUUM SALUTARE 2021/3.

With regard to the differentiated nature of the regulation, the inappropriate treatment of the transaction is an outstanding risk in connection with real estate transactions from a VAT point of view. If the parties involved do not properly classify the transaction, the tax authority may establish a tax shortfall in the case of the selling or purchasing party, as well as apply other adverse legal consequences. The European Court of Justice places emphasis on the fulfilment of substantive requirements when examining the exercise of the right to deduct tax, while in the case of a violation of formal requirements, the right of deduction can only be restricted in a very narrow circle. At the same time, if the transaction is subject to reverse charge instead of direct taxation, it is not considered contrary to EU law if the tax authority denies the buyer's right to deduct tax, and the buyer must claim back the additional tax paid by the buyer in error from the tax authority. The study summarises the decisions of the European Court of Justice in relation to the examination of the above legal issues, the principles laid down in these decisions and the main considerations related to them.

II. Questions of the definition of building plot in the field of value added taxation

Published: PÁZMÁNY LAW WORKING PAPERS 2022/3.

In the field of value added taxation, the sale of building land is subject to a significantly different regulatory regime from other real estate sales, yet in practice there are a significant number of cases where the definition of building land (including, in particular, the demarcation of a building plot from an undeveloped property that does not qualify as a building plot) and thus the determination of the correct tax consequences of the transaction poses a problem for taxpayers. Interpretation is made more difficult by the fact that EU law gives the Hungarian legislator a free hand – within certain limits – and thus the decisions of the European Court of Justice contain few aspects regarding certain elements of the concept of building land under the Value Added Tax Act. The study aims to present the concept of building plot in EU law and in domestic law, as well as the official and judicial jurisprudence developed in connection with certain conceptual elements of decisive importance, including the problems raised and possible directions of interpretation related to interpretation.

III. Questions related to the definition of real estate in the field of value added taxation

Publication: In: Gyula Bándi - Anett Pogácsás (eds.): Permanence and Adaptation. Selected doctoral studies. Pázmány Press, Budapest, 2023.

From 2017, a new definition of real estate with a uniform VAT perspective was introduced in EU law and in domestic law. The definition opened a new era in the interpretation of the concept of real estate in terms of VAT. In view of the broad definition of real estate, it is necessary to pay special attention to whether real estate is involved in each transaction, especially since this concept can also be applied to cases that do not qualify as real estate in the ordinary sense of the word (which typically considers land and the buildings standing on it as real estate) or in the case of other types of domestic taxes. In addition, in certain cases, the VAT regulation applicable to real estate may also be applicable to transactions that are not otherwise legally covered by this scope. In the study, I discussed the introduction of the concept of real estate, the legal practice developed in this regard, and the difficulties of interpretation.

IV. Reducing the VAT rate on the sale of residential real estate – a tool of social policy?

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The determination of the VAT treatment of real estate – primarily by applying the preferential tax rate for new residential properties – has been a recurring tax policy tool in Hungary in recent years. From 2010 onwards, it has been an important tax policy objective to increase the emphasis on consumption-type taxes over taxes on income, and to renew the complex and over-regulated taxation and tax collection system, including the system of VAT payment and collection. In the recent period, a significant part of the dissertations published on value added tax (VAT) have been related to the applicability of the 5% tax rate introduced in connection with the sale of new homes. In this context, it should be highlighted that the regulation will remain in force until the end of 2024 (or, under certain conditions, until the end of 2028), and its extension for further years cannot be ruled out, taking into account the trends of recent years. In the study, I analysed to what extent the determination of the preferential tax rate is fair in relation to a sector that plays a key role in the economy, such as residential real estate, and whether the reduction of the tax rate actually served and can serve social policy purposes, as it appears from the legal justification.

V. VAT treatment of real estate leasing

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Real estate leasing – in addition to the sale of real estate – is one of the most common types of transactions in the economy. The VAT Act contains a separate concept in relation to leasing (or rental income). Based on the concept, in addition to the legal relationship based on a lease contract, any other legal relationship during which the entitled party reimburses or is obliged to reimburse the obligated party for the temporary use of the product in full or the majority of the consideration qualifies as leasing. It follows from this definition that, in addition to classic letting, any construction in respect of which consideration is payable for the temporary use of the immovable property qualifies as a lease, i.e. the classification under civil law is not applicable. In the study, VAT issues arising in connection with the tax treatment related to real estate leasing and certain specific cases of real estate leasing (in particular: the leasing of properties serving the accommodation of accommodation services, the placement of means of transport and parking) are analysed.

VI. Reducing VAT rates on residential property sales – a tool of social policy?

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In the study, I examined the effects of the introduction of the preferential tax rate related to residential properties in a slightly different approach. The specialty of the study is that this is the only material not written in Hungarian among the works so far.

VII. Issues of the definition of built-up properties in the value added tax regulation

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The range of built-up properties cannot be considered homogeneous from the point of view of value added tax. We distinguish between buildings (according to the terminology used in some sources and in the tax authority's statement), new and old (used) built-up properties. This further breakdown or grouping is also related to the fact that the legal regulation contains different VAT implications for each type of real estate. Considering that the criteria to be taken into account are quite complex, it is necessary to pay special attention to whether real estate is involved in the analysis of each transaction. If so, further investigation is necessary to determine whether the property qualifies as a built-up property for VAT purposes and which property type it belongs to within this category. This classification has a significant impact on the correct classification of transactions related to the given property for VAT purposes. In view of the above-mentioned circumstances, the study reviewed the conceptual elements and demarcation criteria of the various types of built-up properties, including the principles reflected in the decisions of the relevant European Court of Justice and the interpretations of the Hungarian authorities and courts.